IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 502 OF 2006

SMT. JANQUI R. NAIK(SIN.DEC.) ....Petitioner
THROUGH HER HEIRS.,

Versus

PANDURANG G. GAUNEKAR, PONDA GOA. ....Respondent

Mr. Valmiki Menezes, Advocate for the petitioners.

Shri V.P.Thali, Advocate for the respondents.

Coram:- J. N. PATEL, J.

Date:- 17th November, 2006

P.C.

Rule is returnable forthwith.

2. Heard.

3. The petitioner has approached this Court impugning the orders passed by the Mamlatdar as well as the Deputy Collector in the tenancy proceedings wherein, in his application for grant of injunction came to be rejected.

4. It is the case of the petitioner that though he has made out prima facie case that he was a tenant of the land on which the respondents have undertaken construction. The same has not been taken into consideration and therefore the impugned orders deserve to be quash and set aside and in order to protect his rights the Court should grant the injunction restraining the respondent from construction on the land.

5. The contention of the petitioner is that the defendant is allowed to

complete the construction and transfer the property, it will cause irraparable loss to him which cannot be compensated in terms of money.

6. On the other hand, it is the contention of the respondent that the dispute between the parties that the land in question came to be settled by filing consent terms in Regular Civil Suit No.5/74 which was disposed of on 7.2.1985 and that the purported tenancy rights in respect of the suit property was given up by the present petitioner who was the defendant no.6 in the Civil Suit. Further there is no prima facie case made out by the petitioner to show that they are tenants of the suit property and therefore the Mamlatdar as well as the Deputy Collector was justified in rejecting their application for injunction. It is submitted that the construction undertaken by the respondents is almost completed to the extent of 90% and if at this stage he is prevented from dealing with the property, it will cause irraparable loss to him and considering the facts and circumstances, the balance of inconvenience tilts in favour of the respondents as for all these years the petitioner was not successful in getting any injunction in his favour and therefore at this stage, restraining the petitioner to proceed with the project would rather result in causing substantial loss of investment to the respondents, which cannot be compensated in terms of money and passage of time which will affect the value of the structure.

7. The suit property is survey no.105/5 which has been further sub-divided to 105/14 and 105/25. It is on these survey no.105/14 and 105/26 on which the respondents have undertaken construction. The Mamlatdar as well as the Deputy Collector has prima facie stated that the petitioner has not been able to make out a case that they were tenants of the suit property and refused to grant injunction in their favour. Even otherwise, as per the consent terms filed by the parties in Regular Civil Suit No.5/74 which was pending in the Court of Civil Judge Senior Division at Ponda and this suit was disposed of in the terms of consent terms by order dated 7.2.1985 in clause (m) of the consent terms it has been agreed as under :-

"(m) The plaintiffs admit defendant no.6 as their mundkar and agree to transfer to him his house and cattle shed. The defendant no.6 agrees to surrender transfer, and otherwise part with the possessison and the tenancy rights to the paddy field in exchange for grant of 150 square metres of land to be given by the plaitniffs to him."

8. The learned Counsel for the plaintiff submits that the very clause amounts to admission on the part of the respondents that defendant no.6 who were the present petitioner have agreed to surrender and transfer and otherwise part with the tenancy rights to the paddy field in exchange for grant of 150 square metres of land to be given by the plaintiffs to him. It is in consideration of this surrender of tenancy rights that the petitioners were given 150 square metres of land and therefore for the purpose of grant of injunction, this itself prima facie shows that the petitioners were tenant of the original survey no.105/5. It is submitted that the clause in the consent terms cannot be acted upon at it is against public policy and the petitioner could not have surrendered their tenancy rights in favour of the plaintiff. As in case of the tenant, if the tenancy is transferred or surrendered, then it can be only in favour of the State. This contention of the learned Counsel for the petitioners cannot be accepted that the respondents have admitted to be tenant of the premises. In the context of the dispute between the parties pending in the Civil Suit the petitioners have not been able to place any documents on record to show that they are tenants of the suit property and therefore the Mamlatdar as well as the Deputy Collector were right in rejecting the application for injunction.

9. Therefore this Court find no merits in the case of the petitioners for grant of interim injunction. Needless to say that in case the petitioners succeeds, they can enforce their rights and suitably compensated. With these observations, the petition is dismissed.

10. Rule discharged.

11. Interim order stands vacated.

J. N. PATEL, J.

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